

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DOUGLAS WAYNE PERRY,

Plaintiff,

No. CIV S-04-0868 JAM EFB PS

vs.

PAUL ZUPAN, et al.,

Defendants.

ORDER

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This action, in which plaintiff is now proceeding *in propria persona*, was referred to the undersigned under Local Rule 72-302(c)(21), pursuant to 28 U.S.C. § 636(b)(1). On February 4, 2009, plaintiff filed correspondence with the court in which plaintiff expresses an intent to abandon this action.

The Federal Rules of Civil Procedure govern voluntary dismissal. Subject to exceptions not applicable here, a plaintiff may voluntarily dismiss an action without a court order by filing:

- (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or
- (ii) a stipulation of dismissal signed by all parties who have appeared.


Fed. R. Civ. P. 41(a)(1)(A).

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1 The court construes plaintiff's February 4, 2009, filing as an expression of his intent to
2 voluntarily dismiss this action. However, since defendants have answered, plaintiff cannot
3 voluntarily dismiss it without the defendants' consent. Thus, the defendants must have an
4 opportunity to consent to the dismissal.

5 Accordingly, it is ORDERED that within five days of the date of this order, defendants
6 may file and serve a document consenting to dismissal of this action pursuant to Rule
7 41(a)(1)(A)(ii). Should defendants file their consent, the court will construe the consent and the
8 instant filing together as a stipulation for voluntary dismissal pursuant to Rule 41(a)(1)(A)(ii).

9 Dated: February 4, 2009.

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11 EDMUND F. BRENNAN
12 UNITED STATES MAGISTRATE JUDGE
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